

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #9	CCRB Case #: 201706223	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/24/2017 9:24 PM	Location of Incident: 876 Utica Avenue	Precinct: 67	18 Mo. SOL 1/24/2019	EO SOL 1/24/2019	
Date/Time CV Reported Tue, 07/25/2017 3:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/01/2017 10:51 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Robert Falcone	01052	948950	067 PCT
2. POM Melvin Carpio	19803	958371	067 PCT
3. POM Miguel Vanbrakle	28743	955616	067 PCT
4. POM Robert Lodestro	30338	950762	067 PCT
5. POM John Nemeth	17897	955259	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Corey Anderson	07959	948616	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Robert Falcone	Force: Sergeant Robert Falcone struck § 87(2)(b) with an asp.	
B.POM Melvin Carpio	Force: Police Officer Melvin Carpio struck § 87(2)(b) with an asp.	
C.POM Miguel Vanbrakle	Force: Police Officer Miguel Van Brakle used pepper spray against § 87(2)(b)	
D.SGT Robert Falcone	Force: Sergeant Robert Falcone used physical force against § 87(2)(b)	
E.POM Melvin Carpio	Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)	
F.POM Miguel Vanbrakle	Force: Police Officer Miguel Van Brakle used physical force against § 87(2)(b)	
G.POM John Nemeth	Force: Police Officer John Nemeth used physical force against § 87(2)(b)	
H.POM Robert Lodestro	Force: Police Officer Robert Lodestro used a Taser against § 87(2)(b)	

Case Summary

On July 25, 2017, Sgt. Robert Falcone of the 67th Precinct filed this complaint on behalf of § 87(2)(b) with the Internal Affairs Bureau via telephone, generating IAB log number 2017-28952. On August 1, 2017, IAB forwarded this complaint to the CCRB.

On July 24, 2017, at approximately 9:24 p.m., police responded to UT Deli, located at 876 Utica Avenue in Brooklyn, after § 87(2)(b) called 911 to report that § 87(2)(b) had menaced him with a knife in his store. Sgt. Robert Falcone and PO Melvin Carpio of the 67th Precinct encountered § 87(2)(b) on the sidewalk outside the store and ordered him to take his hands out of his pockets, put them behind his back, and get on the ground. Instead, he clenched his fists and took a fighting stance. Sgt. Falcone and PO Carpio each struck § 87(2)(b) in his arms and legs with their asps approximately twice (**Allegations A and B**). These asp strikes had no apparent effect on § 87(2)(b) who pushed a pile of boxes on the curb towards the officers and placed his back against a glass storefront. PO Miguel Van Brakle and PO John Nemeth of the 67th Precinct arrived on scene, and PO Van Brakle pepper sprayed § 87(2)(b) (**Allegation C**). § 87(2)(b) grabbed onto a nearby railing. All four officers then pulled § 87(2)(b) off of the railing and down to the ground (**Allegations D, E, F, and G**). PO Robert Lodestro and PO Corey Anderson of the 67th Precinct arrived on scene, and § 87(2)(b) continued to refuse to put his hands behind his back. PO Lodestro fired his Taser prongs into § 87(2)(b)'s back and discharged one Taser cycle (**Allegation H**). The officers then handcuffed § 87(2)(b). § 87(2)(b) was transported via ambulance to § 87(2)(b) to have the Taser prongs removed, and he was charged with § 87(2)(b), § 87(2)(a) 160.50.

Surveillance footage obtained from UT Deli (Board Review 01) shows Sgt. Falcone and PO Carpio striking § 87(2)(b) with their asps. This footage is embedded below and can also be found in IA#153.



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This case was reassigned from Inv. Julian Phillips to the undersigned on September 14, 2017.

Mediation, Civil and Criminal Histories

- This case was deemed ineligible for mediation due to § 87(2)(b)'s arrest.
- As of October 27, 2017, § 87(2)(b) has not filed a notice of claim in regards to this incident (Board Review 02)/

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 04).
- Sgt. Falcone has been a member of the NYPD for seven years and is the subject of two additional CCRB allegations involving two cases with no substantiated allegations. § 87(2)(g)
- PO Carpio has been a member of the NYPD for two years and is not the subject of any additional CCRB allegations (Board Review 05).
- PO Van Brakle has been a member of the NYPD for four years and is the subject of 15 additional CCRB allegations involving six cases with no substantiated allegations (Board Review 05).
 - PO Van Brakle is the subject of Force: Physical Force allegations in case numbers 201502958 (exonerated), 201700442 (complainant uncooperative), and 201707238 (currently under investigation).
- PO Nemeth has been a member of the NYPD for two years and is not the subject of any additional CCRB allegations (Board Review 05).
- PO Lodestro has been a member of the NYPD for six years and is the subject of three additional CCRB allegations involving three cases with no substantiated allegations (Board Review 05).
 - PO Lodestro is the subject of a Force: Nonlethal Restraining Device allegation in case number 201702611 (complaint withdrawn).

Potential Issues

- Contact attempts to § 87(2)(b) were exhausted, and the investigation was unable to establish contact with § 87(2)(b) § 87(2)(g)

Findings and Recommendations

Allegation A – Force: Sergeant Robert Falcone struck § 87(2)(b) with an asp.

Allegation B – Force: Police Officer Melvin Carpio struck § 87(2)(b) with an asp.

Allegation C – Force: Police Officer Miguel Van Brakle used pepper spray against § 87(2)(b)

Allegation D – Force: Sergeant Robert Falcone used physical force against § 87(2)(b)

Allegation E – Force: Police Officer Melvin Carpio used physical force against § 87(2)(b)

Allegation F – Force: Police Officer Miguel Van Brakle used physical force against § 87(2)(b)

Allegation G – Force: Police Officer John Nemeth used physical force against § 87(2)(b)

Allegation H – Force: Police Officer Robert Lodestro used a Taser against § 87(2)(b)

§ 87(2)(b) stated that he called 911 because § 87(2)(b) entered UT Deli although he was banned from the store by court order. He knew § 87(2)(b) to carry a knife in his backpack, but he did not actually see the knife on this occasion. § 87(2)(b) exited the store and § 87(2)(b) heard Sgt. Falcone and PO Carpio tell § 87(2)(b) to put his hands up. § 87(2)(b) raised his arms as though he was preparing to fight the officers. § 87(2)(b) then

saw an officer swing an asp at § 87(2)(b) but he did not see where the asp struck. § 87(2)(b) then resumed working and did not see the remainder of the encounter between § 87(2)(b) and the officers, but he noted that he heard noises indicative of fighting.

According to the Sprint for Event § 87(2)(b) (Board Review 11), § 87(2)(b) stated to the 911 operator that § 87(2)(b) was shoplifting and that he saw a knife in § 87(2)(b)'s hand. § 87(2)(b) told the 911 operator that § 87(2)(b) was wearing a black shirt, black pants, and a black hat and was standing at the corner of Utica Avenue and Church Avenue.

A UT Deli employee known only as § 87(2)(b) who was present during the incident, provided a brief unrecorded statement to Inv. O'Connor and Inv. Gardner when they visited the store on August 2, 2017. § 87(2)(b) stated that § 87(2)(b) threatened employees inside the store with a knife and was breaking items, and that another employee called 911. Once the officers arrived, § 87(2)(b) began to fight back against them as they attempted to take him into custody.

Exterior surveillance footage obtained from UT Deli (Board Review 01) shows § 87(2)(b) standing outside the store when Sgt. Falcone and PO Carpio arrive on scene. An employee exited the store and pointed towards § 87(2)(b). Sgt. Falcone and PO Carpio approached § 87(2)(b) who took off his backpack, pulled up his pants, and stood face-to-face with the officers while pacing from side to side for approximately 15 seconds. § 87(2)(b)'s stance was wide, and he slightly bent his knees and waist as if to ensure he was firmly planted on the ground. Sgt. Falcone attempted to grab § 87(2)(b)'s right arm, and § 87(2)(b) pulled it away from him. Sgt. Falcone swung his asp once at § 87(2)(b) striking him in his right arm. PO Carpio also drew his asp but did not swing it at this moment. § 87(2)(b) moved behind a stack of boxes that was on the sidewalk and pushed the boxes towards the officers. § 87(2)(b) Sgt. Falcone, and PO Carpio then walk out of the frame. PO Van Brakle and PO Nemeth can be seen running towards § 87(2)(b) Sgt. Falcone, and PO Carpio, but the remainder of the incident is not visible in this video.



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§ 87(2)(g) Sgt. Falcone and PO Carpio stated that when they approached § 87(2)(b) he was clenching his fists and had placed his right hand in his pocket. Sgt. Falcone stated that § 87(2)(b) was sweating and his eyes were red and dilated, and he and PO Carpio later learned that § 87(2)(b) was under the influence of synthetic marijuana (K2). Sgt. Falcone and PO Carpio ordered § 87(2)(b) to remove his hand from his pocket multiple times, and § 87(2)(b) refused to comply. Sgt. Falcone attempted to grab § 87(2)(b)'s right arm, and § 87(2)(b) pulled his arm out of his pocket and away from Sgt. Falcone. § 87(2)(b) then removed his backpack and assumed a fighting stance by raising his fists up to his head. Sgt. Falcone and PO Carpio drew their asps and struck § 87(2)(b) with them in his arms and legs. Sgt. Falcone and PO Carpio each acknowledged striking § 87(2)(b) twice. § 87(2)(b) backed away from the officers and towards a glass storefront or wall, at which point PO Van Brakle and PO Nemeth arrived on scene. PO Van Brakle told § 87(2)(b) that he would pepper spray him if he did not put his hands behind his back, and § 87(2)(b) did not comply and remained in the fighting stance. PO Van Brakle pepper sprayed § 87(2)(b) in his eyes from approximately eight to ten feet away

because § 87(2)(b) was much larger than him and going “hand-to-hand” with him would not have been effective. § 87(2)(b) closed his eyes, leaned his head forward, and grabbed onto a nearby railing with both hands. PO Carpio handcuffed one of § 87(2)(b)’s arms, but he was unable to handcuff the other arm at this moment. Sgt. Falcone stated that § 87(2)(b) swung his elbows and kicked him once in his leg. All four officers acknowledged grabbing § 87(2)(b) and bringing him down to the ground. Sgt. Falcone, PO Van Brakle, and PO Nemeth stated that they pulled him down to the ground, while PO Carpio stated that they grabbed his legs and “carried” him down to the ground. § 87(2)(b) was face-down on the ground and continued to refuse to surrender his hands to the officers. At this point, PO Lodestro arrived on scene and told § 87(2)(b) that he would be Tased if he did not stop resisting. § 87(2)(b) did not comply and tried to stand up, so PO Lodestro fired his Taser prongs from approximately three feet away. The prongs landed in § 87(2)(b)’s back, and PO Lodestro discharged one Taser cycle. The officers were then able to overcome § 87(2)(b)’s resistance and handcuff him. A box cutter was recovered from § 87(2)(b)’s pants pocket (Board Review 12). The Taser darts were removed from § 87(2)(b)’s back at § 87(2)(b). No additional injuries to § 87(2)(b)’s person have been documented.

The officers’ Threat, Resistance, and Injury Reports (Board Review 06, 07, 08, 09, 10) were generally consistent with their statements.

According to Patrol Guide Procedure 221-01, “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.” See Board Review 13.

§ 87(2)(g)

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Squad: 9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date